

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**JOHN W. GOFF AND GOFF GROUP,
INC.,**

Plaintiffs,

v.

PHOENIX-DURANGO, ET AL.,

Defendants.

**CIVIL ACTION NO.
CV - 2:06cv389-SRW**

DEFENDANTS' OBJECTION TO PLAINTIFF'S MOTION TO REMAND

COMES NOW Phoenix-Durango, LLC, Jeremiah A. Henderson II, and Jeremiah A. Henderson III, defendants in the above-styled action, and for their Objection to Plaintiff's Motion to Remand, say as follows:

On May 26, 2006, Plaintiff John W. Goff, a resident of Alabama, filed a Motion to Remand, arguing lack of diversity jurisdiction because "it is reasonable to assume that at least one of the Defendants [Jeremiah A. Henderson II or Jeremiah A. Henderson III] has a domicile in Alabama." *See* Plaintiff's Brief in Support of Motion to Remand, With Motion for Leave and Extension of Time to Conduct Jurisdictional Discovery, filed May 26, 2006. Plaintiff's sole basis for this "assumption of residency" is that simply because the Hendersons own property in Alabama, they must be residents of the state. Clearly, such "speculation" in Plaintiff's ill-founded Motion to Remand provides no basis for the Court to make a decision on its jurisdiction over this matter.

One's "citizenship" or "domicile" for diversity jurisdiction purposes is determined by two factors: "(1) physical presence within a state; and (2) the mental intent to make a home there indefinitely." *McDonald v. Equitable Life Ins. Co. of Iowa*, 13 F.Supp. 2d 1279 (M.D. Ala.

1998). Attached as Exhibits to this Objection are affidavits signed by Jeremiah A. Henderson II and Jeremiah A. Henderson III which show unequivocally that Jeremiah A. Henderson II is a resident of Texas and that Jeremiah A. Henderson III is a resident of Florida. *See* Affidavit of Jeremiah A. Henderson II and Affidavit of Jeremiah A. Henderson III, attached hereto as Exhibits 1 and 2. Jeremiah A. Henderson II has resided in Texas since January 2004. *See* Exhibit 1. Texas is his permanent state of residence, and he intends to remain there. *See* Exhibit 1. He has a Texas drivers license, and he is registered to vote in Texas. *See* Exhibit 1. Jeremiah A. Henderson III has resided in Florida for over five years. *See* Exhibit 2. Florida is his permanent state of resident, and he intends to remain there. *See* Exhibit 2. He has a Florida drivers license and a Florida firearm license, and he is registered to vote in Florida. *See* Exhibit 2. Clearly, both Jeremiah A. Henderson II and Jeremiah A. Henderson III, who reside within Texas and Florida, respectively, and who have the mental intent to make their homes in Texas and Florida, respectively, are residents of Texas and Florida for diversity jurisdiction purposes. *See* Exhibits 1 and 2.

Clearly, this Court has original jurisdiction under 28 U.S.C. § 1332. Complete diversity of citizenship exists between Plaintiffs and all defendants: Plaintiff Goff Group, an Alabama corporation with its principal place of business Alabama; Plaintiff Goff, a citizen of Alabama; Defendant Phoenix-Durango, a limited liability company which is a citizen of Texas and Florida, the states in which its members are citizens; Defendant Jeremiah A. Henderson II, a citizen of Texas; and Defendant Jeremiah A. Henderson III, a citizen of Florida. Removal of this action was proper pursuant to 28 U.S.C. §§ 1332 and 1441.

WHEREFORE, ABOVE PREMISES CONSIDERED, Defendants request this Honorable Court enter an order denying Plaintiff's Motion to Remand and retaining jurisdiction over this matter which was properly removed to this Court under diversity jurisdiction.

s/Vernon L. Wells, II

s/C. Ellis Brazeal

Attorneys for Defendants Phoenix-Durango,
Jeremiah A. Henderson II, and Jeremiah A.
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2006, I electronically filed the foregoing DEFENDANTS' OBJECTION TO PLAINTIFF'S MOTION TO REMAND with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Thomas T. Gallion III
Jamie Johnston
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s/Vernon L. Wells, II
Of Counsel